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SENATE BILL 264

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Kent L. Cravens

AN ACT

RELATING TO CRIMINAL SENTENCING; PROVIDING THAT A FELONY DWI  
CONVICTION MAY BE USED AS A PRIOR FELONY CONVICTION FOR THE  
PURPOSE OF SENTENCING A HABITUAL OFFENDER.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 31-18-17 NMSA 1978 (being Laws 1977,  
Chapter 216, Section 6, as amended) is amended to read:

"31-18-17. HABITUAL OFFENDERS--ALTERATION OF BASIC  
SENTENCE. --

A. ~~[Any]~~ A person convicted of a noncapital felony  
in this state, whether within the Criminal Code or the  
Controlled Substances Act or not, who has incurred one prior  
felony conviction that was part of a separate transaction or  
occurrence or conditional discharge under Section 31-20-13 NMSA  
1978 is a habitual offender and his basic sentence shall be

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1 increased by one year. The sentence imposed pursuant to this  
2 subsection shall not be suspended or deferred, unless the court  
3 makes a specific finding that the prior felony conviction and  
4 the instant felony conviction are both for nonviolent felony  
5 offenses and that justice will not be served by imposing a  
6 mandatory sentence of imprisonment and that there are  
7 substantial and compelling reasons, stated on the record, for  
8 departing from the sentence imposed pursuant to this  
9 subsection.

10 B. ~~Any~~ A person convicted of a noncapital felony  
11 in this state, whether within the Criminal Code or the  
12 Controlled Substances Act or not, who has incurred two prior  
13 felony convictions that were parts of separate transactions or  
14 occurrences or conditional discharge under Section 31-20-13  
15 NMSA 1978 is a habitual offender and his basic sentence shall  
16 be increased by four years ~~and~~. The sentence imposed by this  
17 subsection shall not be suspended or deferred.

18 C. ~~Any~~ A person convicted of a noncapital felony  
19 in this state, whether within the Criminal Code or the  
20 Controlled Substances Act or not, who has incurred three or  
21 more prior felony convictions that were parts of separate  
22 transactions or occurrences or conditional discharge under  
23 Section 31-20-13 NMSA 1978 is a habitual offender and his basic  
24 sentence shall be increased by eight years ~~and~~. The sentence  
25 imposed by this subsection shall not be suspended or deferred.

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1 D. As used in this section, "prior felony  
2 conviction" means:

3 (1) a conviction, when less than ten years  
4 have passed prior to the instant felony conviction since the  
5 person completed serving his sentence or period of probation or  
6 parole for the prior felony, whichever is later, for a prior  
7 felony committed within New Mexico whether within the Criminal  
8 Code or not, including a conviction for a felony pursuant to  
9 the provisions of Section 66-8-102 NMSA 1978; or

10 (2) [~~any~~] a prior felony, when less than ten  
11 years have passed prior to the instant felony conviction since  
12 the person completed serving his sentence or period of  
13 probation or parole for the prior felony, whichever is later,  
14 for which the person was convicted other than an offense  
15 triable by court martial if:

16 (a) the conviction was rendered by a  
17 court of another state, the United States, a territory of the  
18 United States or the commonwealth of Puerto Rico;

19 (b) the offense was punishable, at the  
20 time of conviction, by death or a maximum term of imprisonment  
21 of more than one year; or

22 (c) the offense would have been  
23 classified as a felony in this state at the time of conviction.

24 E. As used in this section, "nonviolent felony  
25 offense" means application of force, threatened use of force or

1 a deadly weapon was not used by the offender in the commission  
2 of the offense. "

3 Section 2. EFFECTIVE DATE. --The effective date of the  
4 provisions of this act is July 1, 2003.

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